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May 27, 2020

Chief Lenn Carter  
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### LETTER DECLINING PROSECUTION AFTER INVESTIGATION

RE: *Officer-Involved Shooting on July 29, 2018, by Sunset Valley Police Department Officer Oscar Lopez involving Marc Antonie Carrillo (DOB 08/06/1992)*

Dear Chief Carter:

The Office of the Travis County District Attorney has reviewed the Travis County Sheriff's Office (TCSO) investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting in which Sunset Valley Police Department Officer Oscar Lopez fired a shot from his service weapon that struck Marc Antonie Carrillo in the left arm. Marc Antonie Carrillo was struck once, but survived his injuries. This letter is to inform you of my decision to decline prosecution of criminal charges against Officer Lopez. My decision does not limit or address administrative action by your agency or other civil actions where non-criminal issues may be reviewed and where different rules and lower levels of proof apply.

Our review of the TCSO investigation into this incident was conducted pursuant to the officer-involved shooting protocol. A copy of this letter will also be posted on the DA official website.<sup>1</sup>

Based upon the evidence available and the applicable Texas law,<sup>2</sup> a jury following the law would not convict Officer Carlos Lopez because the evidence proves the use of force, both lethal and nonlethal, was justified under Texas law. The following sets forth the facts determined during our review, identifies the applicable legal rules, and presents the analysis underlying my opinion.

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<sup>1</sup> <https://www.traviscountytexas.gov/district-attorney/office-divisions/civil-rights/cru>

<sup>2</sup> In arriving at this conclusion, I have relied upon the legal guidelines governing the use of force/deadly force in Texas as set forth in sections 9.31, 9.32 and 9.51 of the Texas Penal Code and related case authority construing those provisions.

## **I. FACTS AND CIRCUMSTANCES SURROUNDING MR. CARRILLO'S SHOOTING AND SUBSEQUENT ARREST.**

In determining the pertinent facts and circumstances surrounding this incident, we rely on the investigative file compiled by the Travis County Sheriff's Office.<sup>3</sup> This requires a review of the entirety of TCSO's file comprised of offense reports, supplements, written and audio statements made by the officer who fired his weapon, as well as other witnesses – both civilians and officers. This includes reviewing all audio and video recordings, 911 calls, law enforcement radio traffic, evidence recovered and developed at the scene, and any other information or evidence related to the investigation into this incident.

### **A. Request for Police - Glass Break Alarm and Dispatch of Officers**

On July 29, 2018, shortly before 4 a.m., the Sunset Valley Police Department received a report of a broken glass alarm coming from Zales Outlet jewelry store, a business located in a shopping center at 5601 Brodie Lane in Sunset Valley, Texas.

Date	Time	User	Type	Conf.	Comments
07/29/2018	03:59:41	S5923	Response		Updated SOP information is available
07/29/2018	04:00:16	S5923	Response		AUD / POA=STORE GLASS BREAK
07/29/2018	04:00:39	S5923	Response		PREMIS#512 [REDACTED]
07/29/2018	04:00:57	S5923	Response		KH NOT RESPONDING UNLESS NEEDED
07/29/2018	04:03:52	S5479	Response		SV13S CHANNEL CLOSED

Officer Oscar Lopez, a patrol officer with the Sunset Valley Police Department (SVPD), was assigned to the call and responded to the scene. In the course of this incident, Officer Lopez fired his weapon once, making him the subject of this review (referred to as the subject officer). The SVPD requested assistance from additional law enforcement agencies, which prompted TCSO and Austin Police Department (APD) officers to respond, but they arrived after the shooting had occurred.<sup>4</sup> Robert Dillard (Unit 5D41), a TCSO deputy that responded, arrived moments after the shooting and engaged in a vehicle pursuit with the subject who was shot as he fled the scene. The pursuit ended after approximately seven minutes and the subject was apprehended and then identified as Marc Antonie Carrillo ("Carrillo"). Carrillo was arrested and transported to jail after being taken to the hospital for treatment and discharge.

### **B. Initial Contact with Marc Antonie Carrillo – Involvement of Officer Oscar Lopez #SSV0136**

Officer Lopez #SSV0136 (Unit SV13S) was working patrol in the early morning hours of July 29, 2018. As indicated below, he was assigned by dispatch to the glass break alarm at 04:00:37 a.m.

<sup>3</sup> Due to it being a small law enforcement agency, the SVPD does not have its own special investigations unit and any officer-involved shootings are investigated by TCSO.

<sup>4</sup> Nearby law enforcement agencies provide SVPD, a small agency in a municipality within the City of Austin, assistance with calls as needed. In this case, APD and TCSO responded to assist.

SV13S

LOPEZ, OSCAR, X (SSV0136)

Unit	Flag	Assigned	Disposition	Enroute	Staged	Arrived	At Patient Avail	Complete
SV13S	Y	04:00:37		04:00:37		04:14:57	04:27:59	09:24:19
5D31	N	04:00:40		04:00:40			04:19:05	06:58:44
5D41	N	04:00:50		04:00:51			04:19:05	06:11:55
5D43	N	04:01:08		04:01:08		04:15:24	04:20:37	06:46:33

Officer Lopez was nearby and arrived within minutes when the alarm call came in. In his statement to TCSO Detective Jeff Ford, Officer Lopez recalled the parking lot was lit well enough to drive through it without overhead lights or headlamps on, which he did that morning while responding to the call.

Once on scene, he positioned his patrol unit in the parking lot to the left of the front entrance to the store and turned his headlights off. In his statement, Officer Lopez indicated he did this to avoid being seen in the event someone was inside.<sup>5</sup> Officer Lopez observed a white four door vehicle with the driver's side window rolled down parked in one of the spaces directly in front of the business. That vehicle was later identified as being driven by Carrillo.

As Officer Lopez exited his patrol vehicle, he saw the male he later learned was Carrillo exiting the jewelry store and relayed this information to SVPD dispatch.<sup>6</sup> Officer Lopez asked Carrillo for identification and attempted to engage him in conversation, at which point Carrillo ignored the officer and continued walking towards the white vehicle, at which point Officer Lopez drew his service weapon to detain Carrillo and gave him multiple commands to show the officer his hands.<sup>7</sup> During this encounter, Officer Lopez's radio was activated and repeated commands he gave Carrillo not to move and to "get down" were broadcast over the air.<sup>7</sup> Carrillo's voice could be heard in the background, although it was difficult to understand his verbal response.

Once Officer Lopez saw that Carrillo continued walking towards the vehicle, he drew his conducted electrical weapon, commonly referred to as a Taser, and deployed it to keep Carrillo from getting into the vehicle.<sup>5</sup> The Taser was ineffective and Carrillo was able to get into the driver's seat of the vehicle and close the door. Officer Lopez then rushed towards the vehicle and reached into it to keep Carrillo from leaving and to ensure that he did not have a weapon inside the vehicle that he could use against the officer.<sup>5</sup> Officer Lopez placed the top half of his body through the driver's side window while his legs remained outside with his feet on the ground as he attempted to keep Carrillo from starting the ignition.

Officer Lopez and Carrillo struggled for control of the key and gear shift for approximately two minutes, after which Carrillo was able to start the ignition. Officer Lopez noted that he did not have full use of his hands, as his right hand still held his service weapon, causing him to keep it at his side to use as a shield.<sup>5</sup> As the physical altercation continued, Carrillo was able to place the vehicle in reverse. As Carrillo aggressively reversed the vehicle at an accelerated pace, Officer Lopez was still halfway inside the vehicle with his arms, head and torso inside and his legs outside the car. The force of the movement caused Officer Lopez's feet to leave the ground as his upper body was still inside the vehicle, which caused him to lose control of his footing.

Officer Lopez indicated this was the moment he made the decision to fire his service weapon, as he feared his life was in danger due to Carrillo's recklessness and his refusal to comply with the officer's

<sup>5</sup> See Officer Lopez's voluntary, video-taped interview with TCSO Det. Jeff Ford. General references to the statement will be made when discussing the officer's explanations of his actions.

<sup>6</sup> See Officer Lopez's patrol unit in-car video.

<sup>7</sup> See SVPD radio traffic.

commands. Officer Lopez feared being run over or struck by Carrillo's vehicle now that Carrillo had control over it.<sup>5</sup> Officer Lopez fired one shot from inside the vehicle and was able to re-holster his weapon and attempted to gain control of the vehicle. Carrillo was able to place the vehicle in drive and flee the scene, causing Officer Lopez to fall backwards and onto the ground.

## II. POST-INCIDENT INVESTIGATION

### A. Witness Statements – Supplemental Offense Reports

TCSO deputies arrived moments after Carrillo fled the area and were able to locate him and subsequently apprehend him. Although they did not witness the shooting incident itself, several deputies assisted in the investigation and subsequent arrest of Carrillo. The location of Carrillo's arrest became a second crime scene where additional evidence was observed and collected.

As these deputies did not witness the shooting itself, they are not identified as witness officers and did not provide statements as part of TCSO's investigation. They did, however, write supplemental reports detailing the events they observed and their responses to this incident.<sup>8</sup>

#### (i) Supplemental Report of Deputy Robert Dillard

Deputy Dillard was working his assignment on West Patrol Nights<sup>9</sup> at approximately 4:00 a.m. when he responded to assist Officer Lopez. As Deputy Dillard drove towards the scene, Officer Lopez relayed "shots fired" over the radio. Deputy Dillard arrived at the location of the shooting and learned that Carrillo fled the scene in a white sedan. He immediately left the area to search for Carrillo and observed what he believed to be the suspect vehicle and engaged it in a vehicle pursuit:<sup>10</sup>

I proceeded north bound through the parking lot, turned right onto Ernest Robles Way, and headed towards W. US 290 Hwy. As I approached the east bound W. US 290 Hwy. access road, I observed the taillights of a vehicle turn right (east bound) onto the W. US 290 Hwy. access road. I got behind the vehicle heading east bound and followed the vehicle from the east bound access road onto W. US 290 Hwy. proper.

As I got nearer the vehicle I identified it as white in color and the vehicle continued to increase speed, at 0408 hours.

I had reason to believe and did believe at that time that the vehicle I was behind was the suspect vehicle, due the time elapsed from it fleeing the scene, the only vehicle seen in the area, and the vehicle's high rate of speed leaving the area. At that time I had already activated my overhead lights and siren.

The suspect vehicle continued east bound on W. US 290 Hwy., at a high rate of speed, numerous times over one-hundred (100) mph, veering across all lanes of traffic; inside, middle and outside lanes.

Deputy Dillard continued the pursuit and did not lose sight of the vehicle until Carrillo was apprehended. Once Carrillo was arrested, Deputy Dillard observed what appeared to be a gunshot wound to Carrillo's right elbow area, Taser wires on his person and a Taser probe in his right hip, below the waistband of his shorts.

<sup>8</sup> Part of a patrol officer's duty when responding to a call includes writing a supplemental offense report. During this incident, Carrillo was arrested for felony evading with a motor vehicle, which was documented under TCSO Offense Report number 18-21220. Due to the involvement of multiple law enforcement agencies and incidents, related incident report numbers were generated containing these reports.

<sup>9</sup> The county of Travis is divided into patrol sectors covering designated geographical locations within the county. The location where the shooting incident occurred fell within Deputy Dillard's assignment, identified as West Patrol Nights. As a deputy working patrol assignments, one of his primary duties included responding to calls for service.

<sup>10</sup> See TCSO OR# 18-21220, Original Supplement, pg. 2 of 3 (2 of 23 entire report).



*Figure 1 – Crime Scene Photograph depicting the white sedan driven by Carrillo as he fled from police and its final location at 2433 E. State Highway 71, Del Valle, TX.*



*Figure 2 - Crime Scene Photograph depicting the bullet hole in the white sedan driven by Carrillo identified as originating from the single shot fired by Officer Lopez (Fig. 1 close-up).*

Deputy Dillard further noted blood in the center console, front dash area, steering wheel, and driver arm rest area of the vehicle.





*Figure 3 – Crime Scene Photograph depicting blood in center console, steering wheel and front dash of Carrillo's vehicle when he was apprehended.*

Deputy Dillard observed a bullet hole in the front passenger seat, the front right passenger door, and the outside of the front right passenger door (See Figures 1 and 2 above), which the investigation revealed was made by the shot fired by Officer Lopez.



*Figure 4 – Crime Scene Photograph depicting the bullet hole in the front passenger seat of Carrillo's vehicle.*



*Figure 5 – Crime Scene Photograph depicting the bullet hole in the front passenger seat and its exit.*



*Figure 6 – Crime Scene Photograph depicting the bullet hole on the inside of the front passenger door of Carrillo's vehicle.*



*Figure 7 – Crime Scene Photograph depicting the bullet hole in Figure 6 (close-up).*

(ii) **Supplemental Report of Sgt. Scott James**

Sgt. James was working his West Patrol Nights assignment when he responded to the alarm call to assist Officer Lopez and SVPD. He recalled hearing there was a subject he later learned to be Carrillo inside the business and that a brief struggle had ensued:<sup>11</sup>

I began heading that way when I heard Sunset Valley Officer Oscar Lopez state he had a subject in the store as he arrived. There was a brief pause then the sound of a struggle on the radio. Almost immediately after that Officer Lopez stated "shots fired" on the radio. Officer Lopez then stated the subject was fleeing in a white car that appeared to be a Nissan or similar type vehicle.

As Sgt. James drove to the scene of the shooting, he learned that Officer Lopez fired one shot before the subject fled, and a description of the subject vehicle and direction of travel were given to responding officers. While still en route, Sgt. James learned that the vehicle was located, a pursuit ensued, and Carrillo was subsequently arrested:<sup>12</sup>

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<sup>11</sup> See TCSO OR #18-21220 Supplement No. 7, p. 1 of 2 (15 of 23 in entire report).

<sup>12</sup> See TCSO OR #18-21220 Supplement No. 7, pp. 1-2 (15-16 of 23).



Hwy 290. Several Officers/Deputies were converging on the scene and I was East bound on Hwy 290 when I heard Deputy R. Dillard #4060 state on the radio he had located the vehicle East bound around Manchaca Rd. Deputy Dillard initiated a pursuit and the suspect began driving at a high rate of speed to get away. The pursuit lasted approximately 7 minutes until the suspect pulled into the

Capital Garden Inn  
2433 E Hwy 71 #101  
Del Valle, Tx. 78617

and stopped. The suspect was taken into custody by the pursuing units. The units directly in the pursuit included Deputy Dillard and two East Midnights units.

When Sgt. James arrived at the location where Carrillo was apprehended, he observed Carrillo to have a gunshot wound to the right elbow. Sgt. James made contact with Sgt. Turner and once he confirmed the scene was secure, he responded to the scene of the shooting incident.

Sgt. James observed several deputies on scene at the jewelry store, along with Officer Lopez and his supervisor, and noted several items of evidentiary value:<sup>13</sup>

Officer Lopez was standing near his Patrol vehicle which was parked in the street area of the parking lot just Northeast of the store. I observed Officer Lopez' Taser on the roof of his vehicle and an expended Taser cartridge on the hood of his vehicle. Just in front of the store around the second to third parking spot in front of Lopez' vehicle was one Taser wire from the expended cartridge. I observed a broken glass front door to Zales along with several smashed jewelry cabinets in the store.

As TCSO supervisor on scene, Sgt. James instructed deputies to block off the section of the parking lot and front of the store identified as the crime scene and begin a crime scene log. Once TCSO Detective Jeff Ford arrived and took control of the scene as the assigned investigator, Sgt. James completed his supervisory duties and had no further involvement on the case.

(iii) **Supplement of Deputy Marlon R. Marburger**

While responding to assist SVPD, Deputy Marburger recalled radio traffic from Officer Lopez indicating there was a subject inside the business. Deputy Marburger heard the emergency radio channel activate and recalled hearing verbal commands "stay back, stay back" being transmitted by Officer Lopez. Moments later Officer Lopez advised "shots fired" over the radio.

Deputy Marburger further recalled Officer Lopez informing officers the subject fled the scene and giving officers a direction of travel and vehicle description. Upon hearing Deputy Dillard relay he was behind the vehicle, travelling at speeds in excess of 110 miles per hour at times, Deputy Marburger headed in their direction to assist in the pursuit.

In his supplement, Deputy Marburger noted that he observed the vehicle and pursuing units turn into the motel at 4233 E State Highway 71, Del Valle, where Carrillo was apprehended.

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<sup>13</sup> See Figures 9, 11 – 12 below, and see TCSO OR #18-21220 Supplement No. 7 p. 2 of 2 (p. 16 of 23).

(iv) **Supplement of Deputy Richard Alvarez**

At approximately 4:05 a.m. on July 29, 2018, Deputy Alvarez was monitoring radio traffic on an emergency channel after hearing Officer Lopez's transmission of "shots fired." While doing so, he learned Deputy Dillard located the subject vehicle that fled the scene. Deputy Alvarez self-assigned to the call in order to disable the vehicle by deploying stingers,<sup>14</sup> but as the vehicles were rapidly approaching, he assisted in the pursuit by taking over as call-out officer<sup>15</sup> and following behind Deputy Dillard's patrol unit.

Once Carrillo was apprehended but before being transported to the hospital for treatment, Emergency Medical Services (EMS) personnel requested a law enforcement escort to the hospital. Deputy Alvarez rode in the ambulance with Carrillo and transported him to jail from the hospital after treatment and discharge. Deputy Alvarez recalled that, while escorting Carrillo to the patrol unit, Carrillo asked "why did the cop shoot me when I didn't even have a gun?" Deputy Alvarez noted that he did not question Carrillo - other than asking for identifying information - during their contact.

(v) **Interview with Marc Antonie Carrillo**

On July 30, 2018, Det. Ford interviewed Carrillo, who agreed to speak with him. Carrillo stated he had been at a bowling alley located at the corner of William Cannon and West Gate Boulevard with his mother and was on his way to her residence when the incident occurred. He told Det. Ford that he did not know where he was, or that Officer Lopez was a law enforcement officer because he did not announce himself as such.<sup>16</sup>

Carrillo stated that he did what Officer Lopez told him to do and did not know why the officer shot him. Det. Ford informed him there was surveillance video which showed him breaking into the Zales jewelry store. He then told Carrillo that Officer Lopez was responding to the alarm call, at which point Carrillo denied any knowledge of the burglary and stated he "blacked out."

Although Carrillo denied remembering a vehicle pursuit with law enforcement, Carrillo informed Det. Ford that he was tased and showed him where the probe entered his right thigh, which Det. Ford noted showed a pin-sized mark, consisted with Officer Lopez's description of events following the shooting incident.

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<sup>14</sup> Commonly referred to as stingers, these are devices used by law enforcement to impede or stop the movement of wheeled vehicles by puncturing their tires.

<sup>15</sup> A call-out officer is an officer tasked with relaying information such as location of vehicles involved and speeds to radio communications to ensure officer and community safety.

<sup>16</sup> On that date, Officer Lopez was in full uniform with a fully visible badge and police patrol unit with lights and sirens, as evidenced by the post-shooting incident photographs taken by Det. Ford as part of his investigation.

### B. Summary of Timeline of Events

The following table summarizes the shooting incident involving Officer Lopez and Carrillo:

TIME (A.M.)	EVENT	SOURCE
03:59:14	Store Glass break alarm activated	CAD 182100096
03:59:21	Officer Lopez assigned by Radio Communications/Dispatch	CAD 182100096
04:03:52	Officer Lopez Channel Closed	CAD 182100096 and Lopez in-car video
04:05:34	Radio dispatch to APD – “Officer Needs Assistance if you have units close”	CAD 182100096
04:05:44	Problem changed from “Call from TCSO- Emergency” to *Assist Code 3 by Austin PD	CAD 182100096
4:05:58	Shots fired	CAD182100096 and Lopez in-car video
4:06:38	Direction of travel and vehicle description for Carrillo relayed by Officer Lopez	SVPD radio traffic and Lopez in-car video
4:08:15	Deputy Dillard in pursuit behind Carrillo’s vehicle EB on US 290 at speeds of 110 MPH	SVPD & TCSO radio traffic, Dillard in-car video
4:08:53	TCSO deputy still behind vehicle EB on 290, speeds of 104 MPH, almost to IH35	SVPD radio traffic and Dillard in-car video
4:13:55	Deputy Dillard reported Carrillo’s vehicle “blacking out” <sup>17</sup> before reaching motel	CAD 182100096 TCSO Radio Traffic
4:14:06	Deputy Alvarez arrived at motel where Carrillo apprehended	CAD 182100096
4:14:21	Carrillo noncompliant, held at gunpoint by Deputy William Seely	CAD 182100096
4:15:23	EMS Requested by Deputy Alvarez for Carrillo’s gunshot wound	CAD 182100096
4:15:38	TCSO and SVPD clear Zales Outlet Jewelry Store	CAD 182100096

<sup>17</sup> Blacking out refers to a vehicle’s headlights being shut off to avoid detection.

### C. Shooting Scene

The shooting occurred in the parking lot of 5601 Brodie Lane, where the physical struggle began as Carrillo approached his vehicle and ended when Carrillo reversed his vehicle, causing Officer Lopez to fall backwards onto the ground.



*Figure 8 – Crime Scene photograph depicting 5601 Brodie Lane, the location of the shooting incident.*

During Det. Ford's investigation, he obtained video surveillance from Zales for the time period during which this incident occurred. The video depicts Carrillo inside the business at the time of Officer Lopez's arrival.



*Figure 9 – Crime Scene Photograph depicting Carrillo inside the jewelry store with the object he used to gain entry.*





*Figure 10 – Crime Scene Photograph depicting the front door Carrillo damaged to gain entry into the business.*

As Carrillo exited the jewelry store, he attempted to hide from Officer Carrillo by crouching down behind the bushes. Officer Lopez initially observed Carrillo with an object in his hand, which he discarded before he approached his vehicle.



*Figure 11 – Crime Scene Photograph depicting the bushes Carrillo hid behind after exiting the jewelry store.*



*Figure 12 – CSP depicting the crowbar Carrillo used to break into the jewelry store.*



*Figure 13 –Crime Scene Photograph depicting crowbar (close up) used by Carrillo.*



Carrillo's vehicle was parked in a space directly in front of the jewelry store, approximately twenty feet from where Officer Carrillo parked his patrol SUV.



*Figure 14 – Crime Scene photograph depicting the location of Officer Lopez' patrol SUV during the incident.*



*Figure 15 – Crime Scene Photograph depicting the parking spot (second from the left) occupied by Carrillo's vehicle during the initial encounter with Officer Lopez.*

As Carrillo reversed his vehicle and drove away, the wire from Officer Lopez's deployed Taser fell on the ground.



*Figure 16 – Crime Scene photograph depicting the Taser wire left behind in the parking spot previously occupied by Carrillo's vehicle.*

#### **D. Firearm and Toolmark Evidence**

No examination was conducted in this case, as this was a single shot incident with the identity of the person discharging the weapon known.

#### **E. Carrillo's Criminal Case Disposition**

During this incident, Carrillo was shot once in the left arm. He was transported to St. David's South Austin Hospital where he was treated and released on July 29, 2018. Once discharged, Carrillo was arrested for felony Evading Arrest with a Motor Vehicle and Burglary of a Building.

On January 25, 2019, Carrillo plead guilty to the offense of Burglary of a Building Enhanced pursuant to a plea agreement. Carrillo was sentenced to six years in the Texas Department of Criminal Justice, Institutional Division.



#### **IV. LEGAL ANALYSIS: REASONABLENESS OF OFFICER LOPEZ'S USE OF DEADLY FORCE**

The use of deadly force without legal justification would constitute a prosecutable criminal offense. In the case of an officer's use of deadly force, to constitute a prosecutable offense would require us to conclude that there are no legal justifications which would apply to the investigative facts. Here, whether or not the officer's use of deadly force was reasonable depends on whether the investigative facts support the conclusion that a reasonable juror would determine that his use of such force was justified in self-defense. For the reasons outlined below, we conclude that a reasonable juror following the law would find the use of force to be justified.

##### **A. Law Governing Use of Deadly Force**

Texas statutory law governs our analysis of the reasonableness of Officer Lopez's use of deadly force in the shooting of Marc Antonie Carrillo.

In the context of the law enforcement use of deadly force, the requirement is that the use of deadly force be limited to situations in which it was immediately necessary.

Numerous Texas laws set out the circumstances under which law enforcement can use deadly force.<sup>18</sup>

##### **B. Texas Law Governing the Use of Deadly Force: Chapter 9**

Chapter 9 of the Texas Penal Code provides three basic circumstances under which a law enforcement officer's use of deadly force is justified: in self-defense, in defense of a third person, or to effectuate a legitimate law enforcement purpose such as an arrest or search. Under the facts of our case, we will be analyzing Officer Lopez's use of deadly force in the context of self-defense.

##### **1. Use of Deadly Force in Self-Defense: Texas Penal Code § 9.32**

Section 9.32 of the Texas Penal Code describes the circumstances under which deadly force may be used in self-defense by any person, including law enforcement. It states:

- (a) A person is justified in using deadly force against another:
  - (1) if the actor would be justified in using force against the other...; and
  - (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
    - 1. to protect the actor against the other's use or attempted use of unlawful deadly force; or
    - 2. to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

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<sup>18</sup>TEX. PEN. CODE §§ 9.32, 9.33, and 9.51 (c).

Section 9.32 expressly predicates the authority to use deadly force on the condition that the actor first has been authorized to use non-deadly force under Section 9.31, which governs the use of non-deadly force. That section provides that:

- (a) ... [A] person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

The actor must first satisfy Section 9.32's requirements controlling the use of deadly force before he or she can be justified in the use of deadly force.

### **C. Analysis: The Facts and Circumstances of Officer Lopez's Use of Deadly Force in Self-Defense – Tex. Pen. Code § 9.32**

Officer Lopez's conduct in discharging his weapon must be deemed immediately necessary at the moment he made the decision to discharge his firearm. We have concluded that the credible facts established in this case show that Officer Lopez's use of deadly force was legally justified. To reach this conclusion, one must look at the facts and circumstances known to Officer Lopez at the time of the shooting itself.

The investigation established that Officer Lopez was the first officer to arrive at the Zales Outlet Jewelry Store after the alarm was received. Upon arrival, Officer Lopez observed Carrillo inside the business at a time when it was closed.

At the time of his encounter with Carrillo, Officer Lopez was aware that:

- The alarm indicated glass breakage at the Zales Outlet jewelry store;
- The call came in when the jewelry store was closed for business;
- The glass to the front door was damaged;
- Carrillo exited the front door with an object in his hand; and
- As Officer Lopez attempted to detain Carrillo, he disregarded the officer's commands and continued walking towards a vehicle parked in front of the business.

Officer Lopez deployed his Taser in an attempt to detain Carrillo after he refused to stop at the officer's commands. The Taser was rendered ineffective due to one prong not making contact, and Carrillo was able to get inside the driver's seat of the vehicle. Officer Lopez and Carrillo then engaged in a physical altercation as Officer Lopez attempted to keep Carrillo from leaving the scene.

Carrillo was able to start the engine and attempted to place the vehicle in reverse. As Officer Lopez struggled to maintain control of Carrillo, his upper body was inside the vehicle and his lower body remained outside. Carrillo reversed at a high rate of speed, causing Officer Lopez to lose control of his body and his feet to leave the ground, at which point Officer Lopez fired a single shot at Carrillo. The shot struck Carrillo in the right arm where it left a perforating wound.<sup>19</sup> As Carrillo reversed at a high rate of speed, the momentum thrust Officer Lopez out of the vehicle, causing him to fall onto the ground.

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<sup>19</sup> A perforating bullet wound means the bullet went through (entered and exited) the object it struck.

In his voluntary interview with Det. Ford, Officer Lopez stated that when he lost control of his footing, he feared getting killed or seriously injured by Carrillo in the moving vehicle, at which point he fired his weapon as he was thrown out of the vehicle.

Based on a review of this incident, Officer Lopez was justified in using deadly force on the grounds of self-defense under § 9.32.

**We agree that the facts and circumstances which Officer Lopez was aware of when he discharged his service weapon are sufficient to satisfy the provisions of Section 9.31, thereby allowing him to use non-deadly force to defend himself as a prerequisite to his use of deadly force.**<sup>20</sup> Officer Lopez was faced with circumstances in which the danger to him was evident and imminent: he was responding to a felony in progress which he personally observed Carrillo commit. His own interactions with Carrillo furthered his belief that Carrillo posed a threat to him. Specifically, the reckless manner in which Carrillo reversed his vehicle and fled the scene at a high rate of speed as Officer Lopez's body was hanging on the vehicle turned Carrillo's vehicle into a deadly weapon, as it was capable of causing Officer Lopez seriously bodily injury or death.<sup>21</sup>

Based on Carrillo's refusal to obey Officer Lopez's commands, his getting into the driver's seat and starting the ignition while Officer Lopez actively attempted to stop him, and further reversing and speeding off at a high rate of speed, it was reasonable for Officer Lopez to fear for his life.

Under these circumstances, it is logical to conclude that Officer Lopez "reasonably believe[d] [that] the [use of] force [was] immediately necessary to protect [himself] against [Carrillo's] use or attempted use of unlawful force."<sup>22</sup> There are no facts or circumstances under which Carrillo's actions would constitute a lawful use of force. Therefore, the provisions of Section 9.32 authorizing Officer Lopez's use of deadly force are applicable and his actions justified.

**The investigation and subsequent apprehension of Carrillo further support Officer Lopez's beliefs that Carrillo's actions posed a danger of serious bodily injury or death to him, as Carrillo continued driving recklessly by engaging multiple deputies in a vehicle pursuit for approximately seven minutes at high rates of speed and driving against traffic before being apprehended.** Under these circumstances, we conclude that Officer Lopez reasonably believed that his use of deadly force was immediately necessary to protect himself against Carrillo's use or attempted use of unlawful deadly force and that a rational jury following the law would also so conclude.

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<sup>20</sup> Under the circumstances then existing and with which the officer was confronted, Officer Lopez's belief that the use of deadly force was immediately necessary is *presumptively* reasonable under Texas Penal Code § 9.32. Specifically, subsection (b) of section 9.32 provides that "[t]he actor's belief...that the deadly force was immediately necessary...is presumed to be reasonable if the actor...knew or had reason to believe that the person against whom the force was used...was committing or attempting to commit" murder.

<sup>21</sup> In Texas, a deadly weapon is defined as "anything that in the manner of its use or intended use is capable of causing death or serious bodily injury." Tex. Pen. Code § 1.07 (17). Texas Courts have further held that a motor vehicle can be a deadly weapon if the manner of its use or intended use is capable of causing death or serious bodily injury. *Ex Parte McKithan*, 838 S.W.2d 560 (Tex. Crim. App. 1992); *Roberts v. State*, 766 S.W.2d 578 (Tex. App. Ct. Third Dist. 1989).

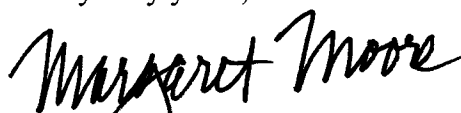
<sup>22</sup> TEX. PEN. CODE § 9.31 (a).

## CONCLUSION

For these reasons, I believe the filing of criminal charges against Officer Lopez is not warranted, and charges will not be filed. We will take no further action in this matter and have concluded our review of this case.

We have released a public/press packet that includes videos, photos and police radio traffic. This decision will be posted on my Office's website and will be accessible under 'Marc Antonie Carrillo' and the date of the incident, July 29, 2018.<sup>23</sup>

Very truly yours,

  
Margaret Moore

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<sup>23</sup> <https://www.traviscountytexas.gov/district-attorney/office-divisions/civil-rights/cru>